

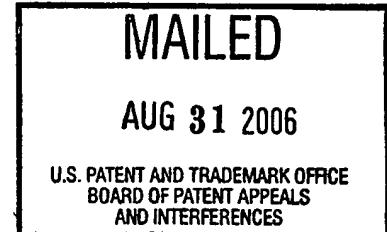
The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

*Ex parte* KARL-HEINZ BAUMANN, ULRICH BRUHNKE,  
JURGEN KOHLER, UWE KREMPELS and  
HANSJORG SCHINKE

Appeal No. 2006-0873  
Application No. 10/043,277  
Technology Center 3600



Decided: August 31, 2006

Before CRAWFORD, BAHR and LEVY, *Administrative Patent Judges*.  
BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal from the examiner's rejection of claims 39, 42, 58 and 61. Claims 27, 31, 32, 34-37, 40, 41, 44-47, 51-56, 59 and 60, the only other claims remaining in the application, have been indicated to be allowable (see advisory action mailed June 24, 2004).

## BACKGROUND

The appellants' invention relates to a support structure for a vehicle comprised of a plurality of lightweight panels, at least one of the panels having an opening cut out therein designated for a specific fitting, wherein the fitting can be inserted into the opening such that it covers the opening completely. Claims 39 and 58 are representative of the claimed invention and read as follows.<sup>1</sup>

39. A vehicle frame comprising:
  - lightweight panels having an opening; and
  - a vehicle device insertable into the opening so as to cover the opening completely, the vehicle device including
    - a support arrangement that is engageable with an edge of the opening to limit the insertion of the vehicle device in the opening, wherein the vehicle device is a steering console.
58. A method for making a passenger vehicle assembly comprising:
  - providing a frame of the passenger vehicle assembly with lightweight panels;
  - providing an opening in one of the lightweight panels;
  - inserting a vehicle device into the opening so as to cover the opening completely; and
  - engaging a support arrangement of the vehicle device with an edge of the opening to limit the insertion

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<sup>1</sup> Claims 42 and 61 differ from claims 39 and 58, respectively, only in that the vehicle device or fitting is recited to be an insertion module for a windshield wiper assembly.

Appeal No. 2006-0873  
Application No. 10/043,277

of the vehicle device in the opening, wherein the vehicle device is a steering console.

The examiner relies upon the following as evidence of unpatentability:

Simonetti US 5,813,288 Sep. 29, 1998

The following rejection is before us for review.

Claims 39, 42, 58 and 61 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Simonetti.

Rather than reiterate in their entirety the conflicting viewpoints advanced by the examiner and the appellants regarding this appeal, we make reference to the examiner's answer (mailed April 6, 2005) for the examiner's complete reasoning in support of the rejection and to the appellants' brief (filed January 11, 2005) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims<sup>2</sup>, to the applied Simonetti patent, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the following determinations.

<sup>2</sup> The term “fitting” in claim 42 lacks antecedent basis and should be changed to “vehicle device.”

The appellants have not separately argued any of the claims on appeal apart from the other claims. Therefore, in accordance with 37 CFR § 41.37(c)(1)(vii), we have selected claim 39 as the representative claim to decide the appeal, with claims 42, 58 and 61 standing or falling therewith.

Simonetti discloses a vehicle compartment comprising panels, including an instrument panel 24 provided with an opening 22 therein for receipt of a steering column 20. A housing 30 for turn signal, windshield wiper and other control devices is mounted on the jacket 28 of the steering column near the steering wheel. The opening 22 is large enough to allow for full travel and tilt of the steering column 20 and a boot 40 is provided to seal and close the space between the opening 22 and the steering column. The boot 40 is made of a flexible elastomeric material and is in the form of an annulus with a transverse split 41 so that it can be opened and closed around the steering column. The boot 40 is U-shaped in cross-section to provide an annular radially inner wall 42 and an annular radially outer wall 44. The radially inner wall 42 tightly engages over and forms a seal around an annular flange 46 of the housing 30 of the steering column. In order to hold the inner wall of the boot tightly engaged around the annular flange of the housing, the ends of the inner wall are coupled together by a coupling 48 forming a releasable connection. The outer wall 44 of the boot at the diametrically opposite side from the coupling 48 is secured to the instrument panel 24 around the opening 22 throughout a minor extent of its circumference, preferably by integral pins 70 formed on the instrument panel.

In reading claim 39 on the structure of Simonetti, the examiner's position, as stated on page 3 of the answer, appears to be that the "opening" of Simonetti's panel begins at opening 22 and continues through the boot 40 to the boot inner wall 42. In other words, the examiner is reading the "opening" of claim 39 on the inner wall 42 of Simonetti's boot 40. Of course, the opening formed by the inner wall 42 of the boot 40 is an opening in a boot, which is not a panel, i.e., a flat piece, usually rectangular, forming a part of the structure of a wall, door, cabinet, etc. (Webster's New World Dictionary, Third College Edition (Simon & Schuster, Inc. 1988)), as that term is ordinarily used. Accordingly, we agree with the appellants (brief, p. 9) that the examiner's reading of the opening of claim 39 on the inner wall 42 of Simonetti's boot is inappropriate. Nevertheless, as explained more fully below, we find that claim 39 does read on the structure of Simonetti.

Initially, we note that claim 39 does not require that the vehicle device (steering console) be a single unitary piece or even comprised only of integral components and, further, does not require that all components of the vehicle device (steering console) be inserted or insertable together as one piece into the opening. With that in mind, we observe that Simonetti's instrument panel 24 has an opening 22 therein and that a vehicle device including a support arrangement (boot 40) and steering column 20, with housing 30 for windshield wiper and other control devices therein, is insertable in the opening 22. The outer wall 44 of boot 40, as illustrated in Figures 4 and 11, for example, extends out to and over the edge of the opening 22, and is mounted around the opening, and further the inner wall 42 of the boot

tightly engages over and forms a seal around an annular flange 46 of the housing 30 of the steering column. Accordingly, the vehicle device or steering console comprising boot 40 and housing 30 covers the opening 22 completely. Furthermore, as illustrated in Figures 4 and 11, the outer wall 44 of the boot 40 forms a support arrangement (the flange overlapping the opening 22 and engaging instrument panel 24 as illustrated in Figure 11) that is engageable with an edge of the opening to limit the insertion of the vehicle device in the opening 22.

Inasmuch as claim 39 reads on the structure of Simonetti, we sustain the rejection of claim 39, as well as claims 42, 58 and 61 that stand or fall with claim 39, as being anticipated by Simonetti.<sup>3</sup> Our rationale in concluding that the subject matter of claim 39 is anticipated by Simonetti, however, differs from that articulated by the examiner. We therefore denominate our affirmance of the rejection as a new ground of rejection, pursuant to 37 CFR § 41.50(b), to provide the appellants with an opportunity to respond thereto.

## CONCLUSION

To summarize, the decision of the examiner to reject claims 39, 42, 58 and 61 is AFFIRMED.

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<sup>3</sup> It is not necessary that the reference teach what the subject application teaches, but only that the claim read on something disclosed in the reference, i.e., that all of the limitations in the claim be found in or fully met by the reference. *Kalman v. Kimberly Clark Corp.*, 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

Appeal No. 2006-0873  
Application No. 10/043,277

This decision contains a new ground of rejection pursuant to 37 CFR § 41.50(b) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)). 37 CFR § 41.50(b) provides "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review."

37 CFR § 41.50(b) also provides that the appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

(2) Request rehearing. Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

Appeal No. 2006-0873  
Application No. 10/043,277

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED; 37 CFR § 41.50(b)

MURRIEL E. CRAWFORD  
Administrative Patent Judge

JENNIFER D. BAHR  
Administrative Patent Judge

**STUART S. LEVY**  
Administrative Patent Judge

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Appeal No. 2006-0873  
Application No. 10/043,277

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